(39)

HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

DIVISION BENCH

CORAM : **HON'BLE SHRI S.R. NAYAK, CJ.**
HON'BLE SHRI D.R. DESHMUKH, J.

MISC. APPEAL NO. 570 OF 2004.

APPELLANTS

1. Sanjay Kumar S/o. Keshav Bhai Gujrati, aged about 25 years, R/o. Karanja Bhilai, Chowki – Javra Tah. & Distt. Durg (CG).
2. Sharda Bai, C/o. Sanjay Kumar R/o. Karanja Bhilai, Chowki Javra, The & Distt. Durg (CG)

Versus

NON-APPLICANT

1. Uttra Bai W/o. Manharan aged about 30 years
2. Ku. Pushpa Bai D/o. Manharan aged 11 years.
3. Ku. Toman D/o. Manharan
4. Hemlata D/o. Manharan aged 4 years.
5. Domeshwar D/o. Manharan aged 1 year.

Present : Shri Avinash Mishra, learned counsel for the appellants.
Smt. Fouzia Mirza, learned counsel for respondents 1 to 4.

ORAL ORDER
(Passed on 22nd August, 2006)

The following oral order of the Court was passed by

S.R. Nayak, CJ.

In this appeal preferred by the owner and the driver of the motor vehicle involved in the accident, the only contention urged by learned counsel for the appellants is that the MACT was not justified in fastening the liability to pay compensation on the appellants, because, the accident took place not on account of any actionable negligence on the part of the driver of the motor vehicle owned by the first appellant, but, due to rash and negligent driving of the deceased himself. It was contended

that the deceased was drunk and he caused the accident due to his own negligence.

(2) We have perused the impugned award. Though in the written statements filed by the appellants it was contended that the deceased was drunk, that plea is not proved by examining the Doctor who conducted the post mortem. Simply because, the post mortem would indicate that there was alcoholic smell, only on that basis and without anything further and corroborating evidence, the Court would not be justified in concluding that the deceased himself was responsible for causing the accident. Therefore, it cannot be said that the factual finding recorded by the MACT after conduct of the trial on a factual issue is perverse for want of legal evidence. No other point was urged before us. The appeal is devoid of merit and it is accordingly dismissed.

Sd/-
Chief Justice

Sd/-
Dilip Raosaheb
Deshmukh
Judge